Health Services
LOS ANGELES COUNTY

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

30 August 4, 2015

PATRICK OGAWA
ACTING EXECUTIVE OFFICER

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August 04, 2015

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

APPROVAL OF AGREEMENT WITH CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES FOR PAYMENT UNDER THE PUBLIC HOSPITAL OUTPATIENT SERVICES SUPPLEMENTAL REIMBURSEMENT PROGRAM
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)

SUBJECT

Request approval of agreements with the California Department of Health Care Services to permit the payment of supplemental Medi-Cal reimbursement to the Department of Health Services for emergency department services provided in Fiscal Year 2013-14, under the Public Hospital Outpatient Services Supplemental Reimbursement Program.

IT IS RECOMMENDED THAT THE BOARD:

1. Delegate authority to the Director of Health Services (Director) or his designee to execute hospital specific agreements with the California Department of Health Care Services (DHCS) to permit payment of supplemental Medi-Cal reimbursement for emergency department services provided by County hospitals during Fiscal Year (FY) 2013-14 under the Public Hospital Outpatient Services Supplemental Reimbursement Program (A.B. 915 Program).

2. Delegate authority to the Director or his designee to execute amendments to the FY 2013-14 agreements or to execute new agreements with DHCS to provide for supplemental Medi-Cal reimbursement for emergency department

services under the A.B. 915 Program for FYs after 2013-14, so long as such agreements do not impose substantial new obligations on the County, and after approval by County Counsel as to form.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

A.B. 915 allows Medi-Cal participating, publicly owned acute care hospitals to use their uncompensated costs of providing outpatient and emergency services to Medi-Cal patients to draw down federal financial participation (FFP) for such costs. Under A.B. 915, which was codified at Welfare and Institutions Code section 14105.96, the additional FFP is then paid to the public hospital that incurred the expenditure as supplemental Medi-Cal reimbursement. To effectuate this payment for FY 2013-14, DHCS had asked each public hospital to execute a new agreement, attached as Exhibit I. In the agreement for this FY, DHCS has altered the terms of the prior agreement substantially, adding, among other things, terms related to compliance with various federal and state laws, and document preparation and retention, and terms limiting DHCS' liability in the event of federal audit or non-appropriation by the Legislature. Approval of the first recommendation will allow the Director or his designee to execute hospital-specific versions of this new agreement to allow LAC +USC Medical Center, Harbor-UCLA Medical Center and Olive View-UCLA Medical Center to obtain supplemental payments for FY 2013-14 and future FYs.

Approval of the second recommendation would authorize the Director or his designee to execute amendments or new agreements with DHCS which would enable the County hospitals to receive supplemental Medi-Cal reimbursement under the A.B. 915 Program in future years, if DHCS wants to revise or re-write the agreement again in a way which does not impose substantial new obligations on the Department of Health Services (Department). The Director's authority to execute such amendments or new agreements would require advance approval of the amendments or agreements as to form by County Counsel.

Implementation of Strategic Plan Goals

The recommendation supports Goal 1, Operational Effectiveness/Fiscal Sustainability, of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

The recommended action will allow the County to bring in additional federal funds for this A.B. 915 Program. The Department projects to receive $17.5 million for FY 2013-14, which is $2.9 million higher than the estimate currently included in the Department's Fiscal Outlook. The Department will be evaluating the ongoing impact and incorporating it into the Fiscal Outlook when it becomes available.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

LAC+USC Medical Center, Harbor-UCLA Medical Center and Olive View-UCLA Medical Center have participated in the A.B. 915 Program since its inception in 2002. This program allows these facilities to draw down FFP for the otherwise uncompensated costs of providing services to Medi-Cal beneficiaries in their emergency departments. Although A.B. 915 allows supplemental payments for outpatient services as well, the Department does not receive such funds because its hospitals are already reimbursed for the full costs of services to Medi-Cal beneficiaries in their outpatient

departments under a different program. Because Rancho Los Amigos National Rehabilitation Center does not have an emergency department, it does not participate in the A.B. 915 Program.

The authorizing statute requires participating hospitals to sign a contract in order to participate in the A.B. 915 Program. The Board authorized the Department to enter into such agreements for each of its eligible hospitals in 2004, and the same basic agreement has been used for all subsequent FYs.

Recently, DHCS reviewed the existing agreement and determined that it needed substantial revision. In the new agreement, DHCS has articulated in greater detail each parties' responsibilities, most of which are already established by law. It has added language which limits its obligations in the event of that a hospital cannot adequately support its costs, a federal disallowance occurs, or the Legislature fails to appropriate the funds. Finally, it added provisions for dispute resolution. Because this is a revenue agreement with the State, it does not contain the County's standard terms and conditions.

County Counsel has reviewed and approved Exhibit I as to form.

CONTRACTING PROCESS

Since this a revenue agreement with the State it is not subject to the County’s contracting process.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the recommendations will allow the Department to access this supplemental reimbursement, which helps to fund its ongoing operations.

Respectfully submitted,

Mitchell H. Katz, M.D.

Director

MHK:adl

Enclosures

c: Chief Executive Office
County Counsel
Executive Office, Board of Supervisors

MEDI-CAL PUBLIC HOSPITAL OUTPATIENT SERVICES (AB 915)
SUPPLEMENTAL REIMBURSEMENT PROGRAM
PROVIDER PARTICIPATION AGREEMENT

Name of Provider: Provider #

ARTICLE 1 - STATEMENT OF INTENT

The purpose of this Agreement is to allow participation in the Public Hospital Outpatient Services Supplemental Reimbursement Program (Program) by the governmentally owned provider, named above and hereinafter referred to as Provider, subject to Provider's compliance with the responsibilities set forth in this Agreement with the California Department of Health Care Services (DHCS), hereinafter referred to as the State or DHCS, as authorized in state law pursuant to Welfare and Institutions Code section 14105.96.

ARTICLE 2 - TERM OF AGREEMENT

A. This Agreement begins on July 1, 2013, and stays in effect until this Agreement is terminated or the Program ends pursuant to the repeal of State or federal statutory authority to make payments or claim federal reimbursement.

B. Either party may terminate this Agreement, without cause, by delivering written notice of termination to the other party at least thirty (30) days prior to the effective date of termination.

C. Failure by Provider to comply with Provider's responsibilities under Article 3 shall constitute a material breach of this Agreement, which may result in termination by DHCS pursuant to Paragraph B. Such notice shall clearly identify the breach. Provider may prevent the termination of this Agreement pursuant to this Paragraph by curing any material breach prior to the effective date of termination of this Agreement if specified in the notice, unless actions giving rise to the material breach result from not complying with Article 13.

ARTICLE 3 -PROVIDER RESPONSIBILTIES

By entering into this Agreement, the Provider agrees to:

A. Comply with the applicable Medicaid provisions, as periodically amended, contained in the following:

- United States Code, title 42, subchapter XIX, commencing with section 1396;
- Code of Federal Regulations, titles 42 and 45;

- The California Medicaid State Plan;
- Welfare and Institutions Code Chapter 7 (commencing with Section 14000), including Section 14105.96;
- California Code of Regulations, title 22, division 3 (commencing with Section 50000);
- State issued policy directives, including Policy and Procedure Letters; and,
- Federal Office of Management and Budget (OMB) Circular A-87.

B. Ensure all applicable state and federal requirements, as identified in Paragraph A of Article 3, are met in rendering services under this Agreement. It is understood and agreed that the material failure by the Provider, as determined by DHCS, to ensure all applicable state and federal requirements are met in rendering services subject to supplemental reimbursement under this Agreement shall be sufficient cause for the State to deny or recoup payments to the Provider as well as terminate this Agreement.

C. Comply with the following Expense Allowability and Fiscal Documentation requirements:

1) Provider cost report and claim form that are accepted or submitted for payment by the State shall not, standing alone, be deemed evidence of allowable Agreement costs.

2) Provider shall maintain for review and audit and supply to the State, upon request, auditable documentation of all amounts claimed pursuant to this Agreement to permit a determination of expense allowability.

3) If the allowability or appropriateness of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate, according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

D. Submit Provider's cost report, in accordance with 42 CFR 413.24 (f)(2), to the Audit and Investigations Division of DHCS pursuant to requirements established by state law and DHCS policy.

E. Accept as payment in full the reimbursement(s) received for services subject to supplemental reimbursement pursuant to this Agreement.

F. To the extent applicable to the Provider, comply with confidentiality requirements as specified in United States Code, title 42, section 1396a(a)(7); Code of Federal Regulations, title 42, section 431.300; Welfare and Institutions Code section 14100.2; and, California Code of Regulations, title 22, section 51009.

G. Submit claims in accordance with Code of Federal Regulations, title 42, section 433.51.

H. Retain all necessary records for a minimum of three (3) years after the end of the quarter in which the provider submitted its cost reports to DHCS. If an audit is in progress, all records relevant to the audit shall be retained until the completion of the audit or the final resolution of all audit exceptions, deferrals, and/or disallowances. Records must fully disclose the name and Medi-Cal number or beneficiary identification code (BIC) of the person receiving the services, the name of the provider agency and person providing the service, the date and place of service delivery, and the nature and extent of the service provided. The Provider shall furnish said records and any other information regarding expenditures and revenues for providing services to Medi-Cal beneficiaries, upon request, to the State and to the federal government.

I. Be responsible for the acts or omissions of its employees and/or subcontractors in the course of implementing this Agreement.

ARTICLE 4 - STATE RESPONSIBILITIES

By entering into this Agreement, the State agrees to:

A. Lead the development, implementation, and administration for the Program and ensure compliance with the provisions set forth in the California Medicaid State Plan.

B. Submit claims for federal financial participation (FFP) based on expenditures for Program services that are allowable expenditures under federal law.

C. On an annual basis, submit any necessary materials to the federal government to provide assurances that claims for FFP will include only those expenditures that are allowable under federal law.

D. Reconcile certified public expenditure (CPE) invoices with supplemental reimbursement payments and ensure that the total Medi-Cal reimbursement provided to Program providers will not exceed the applicable federal upper payment limit as described in Code of Federal Regulations, title 42, part 447 - Payments For Services.

E. Complete the audit and settlement process of the interim reconciliations for the claiming period within three (3) years of the postmark date of the cost report and, at DHCS' discretion, conduct on-site audits.

F. Calculate the actual costs for administrative accounting, policy development, and data processing maintenance activities, including the indirect costs related to the Program provided by its staff based upon a cost accounting system which is in accordance with the provisions of Office of Management and Budget Circular A-87 and Code of Federal Regulations, title 45, parts 74 and 95.

G. Maintain accounting records to a level of detail which identifies the actual expenditures incurred for personnel services which includes salary/wages, benefits, travel and overhead costs for DHCS staff, as well as equipment and all related operating expenses applicable to these positions to include, but not limited to, general expense, rent and supplies, and travel cost for identified staff and managerial staff working specifically on activities or assignments directly related to the Program. Accounting records shall include continuous time logs for identified staff that record time spent in the following areas: the Program and general administration.

H. Ensure that an appropriate audit trail exists within the DHCS' records and accounting system and maintain expenditure data as indicated in this Agreement.

I. Designate a person to act as liaison with Provider in regard to issues concerning this Agreement. This person shall be identified to Provider's contact person for this Agreement.

J. Provide a written response by email or mail to Provider's contact person within thirty (30) days of receiving a written request for information related to the Program

K. Provide program technical assistance and training related to the Program to Provider personnel after receiving a written request from Provider contact person.

ARTICLE 5 PROJECT REPRESENTATIVES

A. The project representatives during the term of this Agreement will be:

Department of Health Care Services	**Provider**
Name: Brie-Anne Sebastien Unit: Medi-Cal Supplemental Payments Unit Telephone: (916) 552-9068 Fax: (916) 552-8651 Email: Brie-Anne.Sebastien@dhcs.ca.gov	Name: Telephone: Fax: Email:

B. Direct all inquiries to:

Department of Health Care Services	**Provider**
Section: Medi-Cal Supplemental Payments Unit: Medi-Cal Supplemental Payments Unit **Attention:** Public Hospital Outpatient Service Supplemental Reimbursement Program Address: 1501 Capitol Avenue, MS 4504 P.O. Box 997436 Sacramento, CA 95899-7436 Telephone: (916) 552-9113 Fax: (916) 552-8651 e-mail: OPSupplemental@dhcs.ca.gov	Telephone: Fax: Email:

C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this Agreement.

ARTICLE 6 - GENERAL PROVISIONS

A. This document constitutes the entire Agreement between the parties. Any condition, provision, agreement or understanding not stated in this Agreement shall not affect any rights, duties, or privileges in connection with this Agreement. This Agreement supersedes any prior or contemporaneous understanding or agreement with respect to the Program.

B. The term "days" as used in this Agreement shall mean calendar days unless specified otherwise.

C. The State shall have the right to access, examine, monitor, and audit all records, documents, conditions, and activities of the Provider and its subcontractor related to the services provided pursuant to this Agreement.

D. No covenant, condition, duty, obligation, or undertaking made a part of this Agreement shall be waived except by amendment of the Agreement by the parties hereto, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and, until performance or satisfaction of all covenants, duties, obligations, or undertakings is complete, the other party shall have the right to invoke any remedy available under this Agreement, or under law, notwithstanding such forbearance or indulgence.

E. None of the provisions of this Agreement are or shall be construed as for the benefit of, or enforceable by, any person not a party to this Agreement.

F. If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way. Notwithstanding the previous sentence, if a decision by a court of competent jurisdiction invalidates, voids, or renders unenforceable a term, condition, or provision in this Agreement that is included in Article 1 then the parties to this Agreement shall either amend this Agreement pursuant to Article 7, or it shall be terminated pursuant to Article 2.B.

G. DHCS and the County shall maintain and preserve all records relating to this Agreement for a period of three (3) years from DHCS' receipt of the last payment of FFP, or until three years after all audit findings are resolved, whichever is later. This does not limit any responsibilities held by DHCS or the County provided for elsewhere in this Agreement, or in state or federal law.

H. The validity of this Agreement and its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue of any action brought with regards to this Agreement shall be in any county in which the Attorney General maintains an office.

I. Any provision of this Agreement in conflict with present or future governing authorities is hereby amended to conform to those authorities and such amended provisions supersede any conflicting provisions in this Agreement. The governing authorities include, but are not limited to the authorities listed in Article 3.A.

ARTICLE 7 - AMENDMENT PROCESS

Should either party, during the term of this Agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through a process that is mutually agreeable to both the State and the Provider. No amendment will be considered binding on either party until it is approved in writing by both parties. Replacing the Project Representative does not require an amendment to this agreement and may be updated with written notice sent to the other party. Written notice may include email.

ARTICLE 8 - AVOIDANCE OF CONFLICTS OF INTEREST BY THE PROVIDER

The Provider is subject to the Medi-Cal Conflict of Interest Law, as applicable and set forth in Welfare and Institutions Code section 14022 and Article 1.1 (commencing with section 14030), and implemented pursuant to California Code of Regulations, title 22, section 51466.

ARTICLE 9 - FISCAL PROVISIONS

Reimbursement under this Agreement shall be made in the following manner:

A. Upon the Provider's compliance with all provisions pursuant to Welfare and Institutions Code section 14105.96 and this Agreement, and upon the submission of a cost report and claim form based on valid and substantiated information, the State agrees to process the cost report and claim form for reimbursement.

B. Transfer of funds is contingent upon the availability of FFP. If, in the event FFP funds for a service period are not available for all of the supplemental amounts payable to Program providers due to the application of a federal limit or for any other reason, both of the following shall apply:

   1) The total amounts payable to all Program providers for the service period shall be reduced to reflect the amounts for which FFP is available.

2) The amounts payable to each Program provider for the service period shall be equal to the amounts computed under Article 3 multiplied by the ratio of the total amounts for which FFP is available to the total amount claimed by all Program providers.

C. Provider shall certify the certified public expenditure from the Provider's General Fund, or from any other funds allowed under federal law and regulation, for reimbursement pursuant to Welfare and Institutions Code section 14105.96. The State shall deny payment of any claim form submitted under this Agreement, if it determines that the certification is not adequately supported for purposes of claiming FFP. However it shall not deny payment of any part of a claim which is adequately supported. DHCS shall provide the certification statement that shall be made on each claim form submitted to DHCS for payment for this Program.

ARTICLE 10 - RECOVERY OF OVERPAYMENTS

A. Provider agrees that when it is established upon audit that an overpayment has been made, DHCS shall recover such overpayment in accordance with California Code of Regulations, title 22, section 51047.

B. DHCS reserves the right to select the method to be employed for the recovery of an overpayment.

C. Overpayments may be assessed interest charges, and may be assessed penalties, in accordance with Welfare and Institutions Code sections 14171(h) and 14171.5.

ARTICLE 11 - BUDGET CONTINGENCY CLAUSE

A. It is mutually agreed that if the State Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate any funds for the Program, this Agreement shall be of no further force and effect as of the first day of the fiscal year for which there is no appropriation. In this event, the State shall have no liability to pay any funds whatsoever to Provider or to furnish any other considerations under this Agreement as of such date and Provider shall not be obligated to perform any provisions of this Agreement.

B. If funding for any state fiscal year is reduced by the State Budget Act for purposes of this Program, the State shall have the option to either cancel this Agreement, with no liability accruing to the State as of such date, or offer an agreement amendment to Provider to reflect the reduced amount.

ARTICLE 12 - LIMITATION OF STATE LIABILITY

A. Notwithstanding any other provision of this Agreement, the State shall be held harmless from any federal audit disallowance and interest resulting from payments

made by the federal Medicaid program and passed on to the Provider as reimbursement for claims providing services pursuant to Welfare and Institutions Code section 14105.96, for the disallowed claim, less the amounts already repaid by the Provider to the State pursuant to Welfare and Institutions Code section 14105.96.

B. To the extent that a federal audit disallowance and interest results from a claim or claims for which the Provider has received reimbursement for services, the State shall recoup from the Provider, upon written notice, amounts equal to the amount of the disallowance and interest in that fiscal year for the disallowed claim. All subsequent claims submitted to the State which include claims similar to those previously disallowed in a federal audit may be held in abeyance, with no payment made, until the federal disallowance issue is resolved.

C. Notwithstanding Paragraphs A and B above, to the extent that a federal audit disallowance and interest results from a claim or claims for which the Provider has received reimbursement for services provided by a non-governmental entity under contract with, and on behalf of, the Provider, the State shall be held harmless by the Provider for one-hundred percent (100%) of the amount of any such federal audit disallowance and interest, for the disallowed claim, less the amounts already repaid by the Provider to the State pursuant to Welfare and Institutions Code section 14105.96**.**

ARTICLE 13 - EXCLUSIONS

Comply with the exclusion requirements in Code of Federal Regulations, title 42, part 1002.

ARTICLE 14 - DISPUTE RESOLUTION

A. An informal dispute resolution process shall be undertaken prior to the dispute resolution processes undertaken pursuant to Paragraphs B to D, below. In case of a dispute, there shall be a discussion between the Provider and the DHCS staff, and if not resolved, then the Provider shall state the issue and explain its position to DHCS in written correspondence. DHCS shall consider the Provider's position and respond in writing. If the issue continues to be unresolved, then the dispute resolution processes in Paragraphs B to D shall be undertaken as appropriate.

B. Nothing in this Agreement shall prevent the Provider from pursuing any other administrative and judicial review available to it under law.

C. Judicial review pursuant to Code of Civil Procedure section 1085 shall be available to resolve disputes relating to the terms, performance, or termination of this Agreement, or any act, failure to act, conduct, order, or decision of DHCS that violate this Agreement subject to Article 1 4.A.

D. Paragraph C above shall not apply to recoupment efforts based on an audit or review of the Provider's performance of the terms and conditions under this Agreement, which shall be reviewed pursuant to Welfare and Institutions Code section 14171.

ARTICLE 15 - AGREEMENT EXECUTION

The undersigned hereby warrants that s/he has the requisite authority to enter into this Agreement on behalf of _____ (Provider) and thereby bind the above named provider to the terms and conditions of the same.

_____
Provider Authorized Representative's Signature

_____
Print Name

_____
Title

_____
Address

_____
Date

_____
Department of Health Care Services Authorized Representative's Signature

_____
Print Name

_____
Title

_____
Name of Department

_____
Address

_____
Date